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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,964	01/17/2002	John M. Cioffi	TI-27725.4	3957
23494	7590	02/03/2005	EXAMINER	
TEXAS INSTRUMENTS INCORPORATED P O BOX 655474, M/S 3999 DALLAS, TX 75265			HSU, ALPUS	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/052,964	CIOFFI ET AL.	
	Examiner	Art Unit	
	Alpus H. Hsu	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 May 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 40,41 and 53-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 41 is/are allowed.
- 6) Claim(s) 40 and 53-55 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/17/02, 11/18/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 53-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 53, lines 5-6, "a method transmitting data" should read as -- a method of transmitting data -- or -- a method of coordinating data transmissions -- for proper claim language recitation.

Claim 55 recites the limitation "the permissible data transmissions rate" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

3. Claim 40 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 5,557,612. Although the conflicting claims are not identical, they are not patentably distinct from each other because by interpreting the communication access request in U.S. Patent No. 5,557,612 as the claimed data request information in the instant application and omitting the further limitation of using a modulation scheme that does not require equalization to decode at the central unit in U.S. Patent No. 5,557,612, it would have been obvious to one of ordinary skill in the art to make U.S. Patent No. 5,557,612 the same invention as claimed in the instant application.

4. Claims 53-55 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 5,680,394. Although the conflicting claims are not identical, they are not patentably distinct from each other because by providing the periodic downstream and upstream communications in sequential

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order, interpreting the quiet period as the claimed settling period, and setting the permissible data transmissions rates at least ten million bits per second as design choice, it would have been obvious to one of ordinary skill in the art to make U.S. Patent No. 5,680,394 the same invention as claimed in the instant application.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claim 41 is allowed.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sperlich and Sulzbacher et al. are cited to show the feature of time division multiplex communication system providing full duplex transmission between a central station and substations similar to the claimed invention.

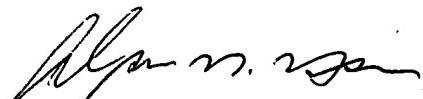
Cioffi and Bingham et al. '667 are cited to show the feature of time division duplexed high speed data transmission utilizing discrete multi-tone transmission scheme similar to the claimed invention.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHH



Alpus H. Hsu
Primary Examiner
Art Unit 2665